

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

SYSCO CENTRAL CALIFORNIA,

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 386.**

Case No. 32-RC-272441

**SYSCO CENTRAL CALIFORNIA, INC.'S
MOTION TO STRIKE PETITIONER'S POST-HEARING BRIEF**

Prepared by:

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Pursuant to Section 102.67 of the NLRB's Rules and Regulations, Sysco Central California, Inc. ("Sysco Central California" or the "Company") moves to strike the International Brotherhood of Teamsters Local 386's (the "Union") improperly filed Post-Hearing Brief because it fails to adhere to the Board's formatting requirements. In the alternative and pursuant to Section 102.66 of the NLRB's Rules and Regulations, Sysco Central California moves to strike Sections III.F. and III.G. from the Union's Post-Hearing Brief because the Union waived these arguments.

1. On March 2–5, 2021, the Parties participated in a Hearing.
2. Pursuant to 29 C.F.R. § 102.67(a), the Parties drafted Post-Hearing Briefs to the Regional Director to state their positions on the appropriate proposed bargaining unit.
3. On March 17, 2021, Sysco Central California e-filed its 38-page Post-Hearing Brief (excluding the table of contents and table of cases and authorities) and served a copy on the Union and Hearing Officer.
4. On March 17, 2021, the Union also e-filed its 74-page Post-Hearing Brief.
5. 29 C.F.R. § 102.67(i)(1) states that "[a]ll documents filed with the Board under the provisions of this section . . . shall not exceed 50 pages in length exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion"
6. Before filing its Post-Hearing Brief, the Union failed to file a request for an extension to the Board's page-limit requirement under 29 C.F.R. § 102.67(i)(1).¹

¹ 29 C.F.R. § 102.67(i)(1) further states that briefs exceeding 20 pages "**shall** contain a subject index with page references and an alphabetical table of cases and other authorities cites." In addition to exceeding the Board's page-limit, the Union also failed to include a table of cases and other authorities.

7. The Union's disregard for the NLRB's Rules and Regulations are prejudicial to the Company. The Parties must abide by these Rules to allow the Parties the equal opportunity to set forth their specific argument, while also allowing the Parties the equal opportunity to respond. Here, the Union's excessively long brief allows it to put forth facts and arguments beyond what was allowed for the Company.

8. Pursuant to 29 C.F.R. 102.67, the Region should strike the Union's improperly filed brief.

9. Even if the Union had satisfied the Board's page-limit and formatting requirements, the Union improperly attempted to raise new arguments for the first time in its Post-Hearing Brief.

10. In Form NLRB-506 (6-20), the Region instructed the Union to **"REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM."**

11. Form NLRB-506 (6-20) states that the "[f]ailure to supply the information requested by this form **may preclude you** from litigating issues under 102.66(d) of the Board's Rules and Regulations."

12. 29 C.F.R. § 102.66(d) further states that:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue **that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response**, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition.

13. In its Responsive Statement of Position, the Union did not assert that: (1) the transportation clerk should be excluded from the unit as a confidential employee; or (2) the router should be excluded from the unit as a 2(11) supervisor.

14. The Union raised these arguments for the first time in its Post-Hearing Brief, and Section 102.66(d) of the Board's Rules and Regulations precludes the Union from doing so. *See Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1, fn. 1 (2017) (holding that "under Sec. 102.66(d) of the Board's Rules, the Regional Director was correct to preclude the Employer from litigating the appropriateness of the petitioned-for unit" after the employer failed to raise the issue in its statement of position).

15. The NLRB Rules and Regulations and the Region's own forms are clear – the Union is precluded from unfairly raising new issues for the first time in its Post-Hearing Brief. Indeed, the Union waived these arguments by failing to raise the issues in its Responsive Statement of Position.

16. Moreover, the party claiming the confidential or supervisory status of any employee has the burden of proof. *In re Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) ("The burden to prove supervisory authority is on the party asserting it.") The Union cannot possibly meet its burden as the record is devoid of sufficient evidence on these issues and the Company was not provided the requisite notice and opportunity to present its own evidence to refute the union's post-hearing claims that were not identified in its Responsive Statement of Position.

17. To prevent the Union's non-compliant Post-Hearing Brief from unfairly prejudicing the Company, Sysco Central California moves to strike the Union's brief in its entirety. In the alternative, Sysco Central California moves to strike Sections III.F. and III.G. from the Union's Post-Hearing Brief regarding arguments that: (1) the transportation clerk should be excluded from the unit as a confidential employee; or (2) the router should be excluded from the unit as a 2(11) supervisor.

Respectfully submitted this 22nd day of March 2021.

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CERTIFICATE OF SERVICE

I certify that on this 22nd day of March 2021, a true and correct copy of the foregoing **Sysco Central California, Inc.'s Motion to Strike Petitioner's Post-Hearing Brief** was filed via NLRB e-filing, and served on the following via email:

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